IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1220 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

VINODKUMAR HIRALAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1220 of 1997

MS NIYATI K SHAH for Petitioner No. 1

MR SUDDANSHU S PATEL APP for Respondent No. 1

MR SV RAJU with MR RJ GOSWAMI for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/09/2002

C.A.V. JUDGEMENT

1. The petitioner, original accused in Criminal Case No.10 of 1997 pending in the Court of the learned Metropolitan Magistrate, 13th Court, Ahmedabad, has filed this application under Section 482 of the Code of Criminal Procedure ('the Cr.P.C.' for short) with the prayer to set aside the complaint and quash the aforesaid proceedings.

2. The complaint dated 15.2.1997 alleging the offences under sections 380, 420, 467, 468, 471 and 120-B of the Indian Penal Code ('the IPC' for short) was filed against the petitioner on the allegations, in substance, that a cheque from the company of the complainant was lost by commission of theft and filled up to demand a sum of Rs.55,65,170/-. The allegation is that the complainant came to know about these facts only upon receipt of a notice dated 3.2.1997 whereby the aforesaid sum was demanded by notice under Section 138 of the Negotiable Instruments Act ('the NI Act' for short). The complaint and the prosecution are sought to be quashed on the grounds that the petitioner has not committed any offence as alleged in the complaint which was absolutely false, frivolous and vexatious and filed with the mala fide intention of stalling the criminal prosecution of the complainant's company under Section 138 of the NI Act. The cheque was, according to the petitioner, given in discharge of the drawer's liability in broad view of the directors. Thus, the complainant's averments therein are alleged to be made with an oblique motive to defeat the liability arising out of the dishonour of the cheque. According to the petitioner, the complainant and the chairman of the company, whose cheque is alleged to have been stolen, is a very powerful and influential person, also chairman of a Government Corporation, recently appointed as such by the then Hon'ble Chief Minister of Gujarat. Thus, in short, the abuse of the process of Court is writ large on the proceedings, according to the petition.

3. It must be noted at the outset that as against the details of transactions given and the averments made on affidavit in the petition, the respondent (original complainant) has chosen not to file any reply and sought to explain that fact with the submission that it was not required and practicable for the complainant to make a counter-affidavit in view of the cross-cases. It is true that an application for quashing the criminal proceedings in the exercise of powers of this Court under Section 482 of the Cr.P.C. can be invoked in rare cases and the complaint has to be taken at its face value without considering the defence or likely defence of the accused.

At the same time, it is not always necessary to altogether ignore the background of facts which is stated on affidavit and which the respondent has chosen not to controvert before this Court.

4. Firstly, examining the allegations in the complaint, it clearly appears that the complaint has been filed after receipt of the notice demanding payment against the cheque which was dishonoured. The complaint is filed by and in the name of a Power of Attorney of the chairman of the company of which the cheque is alleged to have been stolen. It is based on the premise that a whole cheque-book, signed beforehand, used to lie in the office of the director of the company where innumerable persons used to visit. It is initially alleged in the complaint that "a cheque" was suspected to have been stolen and enquiries were being made in the office where the cheque-book was used to be kept. Thereafter, it is repeatedly alleged in the complaint that the whole cheque-book was stolen. It is nowhere stated in the complaint or afterwards that the company, its director or anyone on behalf of the company ever informed the bank about the missing cheque or the cheque-book. The cheque of Rs.55,65,170/- which was dishonoured by the bank, is alleged to have been taken out from the missing or stolen cheque-book and allegations of all the offences are made only and personally against the petitioner whereas the complaint itself states that neither the complainant nor the chairman of the company had ever seen the petitioner; nor were they having any business relation with the petitioner. Even an approximate date of the realisation about missing cheque or cheque-book is conspicuously absent in the complaint.

4.1 As against the above allegations in the complaint, the averments made on oath by the petitioner in the petition gives out a version that in the month of November 1995, when the complainant's company had arranged a public issue of 42,50,000 Equity Shares of Rs.10/- aggregating to Rs.425 lakhs, the chairman and managing director as well as another director had approached the petitioner and requested him to get maximum subscription from Unjha upon an assurance scheme of "Buy-back" at a premium of Rs.2.75 per share. On the basis of that promise and assurance, the petitioner had procured applications for 71,000 fully paid-up shares and 4,99,400 partly paid-up shares from various investors of his group. The amount to be returned as per this "Buy-back" agreement was to the tune of Rs.47,78,150/- which was not paid to the petitioner in spite of repeated demands and requests. The letter dated 7,11,1995

purported to have been signed by the managing director of the complainant's company reads as under:

" I the undersigned Managing Director of Shree Yaax Pharma And Cosmetics Ltd., Ahmedabad expressly agree as per our personal discussion and give this undertaking to you that you will give full co-operation and support for our incoming public issue subscription of Shree Yaax Pharma and Cosmetics Ltd. and will try to give maximum Subscription of the said Public Issue through your corner. I further hereby agree and assure that we will take back all such shares which is subscribed through your corner at Rs.12.50 per share and Rs.0.25 commission per share also will be paid to you."

It is averred in the petition that pursuant to the aforesaid arrangement, agreement and transaction, a meeting of the chairman, managing director and the petitioner was held and an amount of Rs.55,65,170/- was determined to be payable by the company to the petitioner and the cheque in question was issued accordingly. When it was deposited for realization, it returned with the memo dated 27.1.1997 on the ground of "insufficiency of funds". It was on that basis that the notice dated 3.2.1997 came to be issued.

4.2 Upon filing of the complaint in question, it appears that, an order of the learned Metropolitan Magistrate in Criminal Case No.10 of 1997 was obtained for an enquiry by police under section 156 (3) of the Cr.P.C. The petitioner appeared before the Police Inspector, Sabarmati Police Station on 28.2.1997 at about 11.00 forenoon when the police inspector was busy in bandobast on account of the Prime Minister's visit and was asked to come on 3.3.1997. On 3.3.1997, his statement was recorded by the police sub inspector for about three hours at Kali Gram Police Chowky. He was again interrogated by another police sub inspector at Sabarmati Police Station and was threatened with dire consequence and was given three slaps on his face. Although a detailed statement was recorded on 3.3.1997, he was again asked to come on 5.3.1997. Copy of his own statement was also not supplied to him despite a demand therefor.

5. As laid down by the Supreme Court in STATE OF HARYANA v. BHAJAN LAL [1992 Suppl. (1) SCC 335], where the allegations made in the complaint or the FIR, even if they are taken at their face value and accepted

in their entirety, do not prima facie constitute any offence or make out a case against the accused or where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, the special power under section 482 of the Cr.P.C. could be exercised to prevent abuse of the process of the Court and to secure the ends of justice.

5.1 It is held by this Court in UNITED INDIA PHOSPEROUS LTD. v. VINODBHAI MOHANBHAI PATEL [1997 (1) G.L.R. 84] that the question as to whether the cheque in question is issued by the drawer or whether it is forged as claimed by the complainant can be examined in the same criminal proceeding where a criminal case under section 138 of the Negotiable Instruments Act is filed. In the facts of this case, the attempt of the original complainant is obviously at pre-empting such legal proceeding by abusing the process of court and pressurising the petitioner through the police force in the name of investigation. The allegations made in the complaint are such that, in the facts and surrounding circumstances, they could not be believed by a prudent man. In fact, at the end of the arguments and without prejudice to the legal contentions, the learned counsel for the respondent requested to restrict the award of costs to Rs.5,000/- in case the petition was being allowed.

6. It appears from the facts on record that the petitioner is not only implicated in a serious offence and put to serious harassment and loss, but the process of law is abused to avoid the legal proceeding arising out of the dishonour of the cheque. The petitioner has been forced to approach this Curt by way of Criminal Misc. Application No.1095 of 1997 to obtain anticipatory bail and to file the present petition to prevent further harassment. At the time of issuance of RULE and grant of stay against further proceedings by order dated 12.3.1997, the original cheque in question was produced along with the memo of the bank and the Registry was directed to keep it under a sealed cover under safe custody.

7. The Supreme Court has held in para 27 of its judgment in the case of S.N. PALANITKAR v. STATE OF BIHAR [2001 AIR SCW 4435] as under:

"27. In the case on hand, we have already stated above that except against the appellant No.7, no offence was made out against the

> remaining appellants as the ingredients of offences alleged against them were not satisfied. Unfortunately, the High Court failed to exercise jurisdiction under Section 482, Cr.P.C. to correct manifest error committed by the learned Magistrate in issuing process against the appellants 1, 6 and 8 when the alleged acts against them did not constitute offences for want of satisfying the ingredients of the offences. The approach and consideration while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter IV of Cr.P.C. having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 of Cr.P.C. the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482, Cr.P.C. should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of Court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 Cr.P.C. to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."

8. In the above facts and circumstances, the petition is allowed and the proceedings against the petitioner pending in the Court of the learned Magistrate, Court No.13, Ahmedabad in the form of Criminal Case No.10 of 1997 are quashed with costs quantified at Rs.12,000/- which shall be paid by the

respondent No.2 to the petitioner within ten days from today. The original cheque and memo taken into safe

custody shall be returned to the petitioner. Rule is made absolute accordingly.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)